IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 348 OF 1995

1. Pandurang Gopal Khade, age 71,]
2. Namdeo Pandurang Khade, age 31,]
3. Babaso Pandurang Khade, age 39,]
4. Bajirao Pandurang Khade, age 36,]

All r/o Sangrul, Tal. Karvir,]
District Kolhapur.] .. Appellants

Versus

State of Maharashtra.] .. Respondent

Shri S.A. Ingawale for the appellants.

Mr. D.R. More, A.P.P., for the respondent-State.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 27TH APRIL, 2005

ORAL JUDGMENT : [Per Anoop V. Mohta, J.]

1. The appellants have been convicted for the offences under Section 302, 307, 324, 504 r/w Section 34 of the IPC and sentenced to undergo life imprisonment, rigorous imprisonment for 5 years respectively. By the impugned judgment and order dated 7th July, 1995, the 3rd Additional Sessions Judge, Kolhapur, held that on 5th September, 1989, at about 12.00 noon at Sangrul, the appellant-accused No.2 and 3 with common intention along

with the appellant-accused Nos.1 and 4 committed the murder of complainant's brother Yeshwant Ghungurkar (the deceased) and further caused grievous injuries that could have resulted into the death of the complainant [Krishna]. They have voluntarily caused hurt to Baburao, Shantabai, Hindurao, Anjubai, Balabai by using sticks and also intentionally insulted the complainant Krishna and deceased Yashwant to provoke them to commit breach of peace.

2. As per the prosecution and the complainant, there was enemity between the family of complainant and of the accused on account of land "Gaondhar". The accused, therefore, used to give threats to the complainant and his brother Yashwant (the deceased). The incident took place on 5th June, 1989, at about 12.00 noon. On the fateful day, the complainant, along with the deceased, after taking meals, was sitting on a sopa of their house. All the accused, who were the neighbours, came to the house of the complainant Krishna and gave abuses. Accused No.1 was holding a spear. Accused No.2 and 3 were holding axes, accused No.4 was holding a stick. They came near the door of the house of the complainant and asked the complainant to come out. The complainant and the deceased came out of the house. Accused No.3 Babaso started giving axe blows

which was warded off by Krishna by his hand. The accused No.2 Namdeo, however, at the same time, hit an axe blow on the head of Krishna and he, therefore, fell down. The deceased came forward and shouted not to beat his brother. Accused Nos.2 and 3, however, inflicted axe blows on the head of the deceased also. The deceased also fell down. Accused No.4 hit the deceased Yashwant with a heavy stick (article No.12) and accused No.1 hit him with the handle of the spear. In the meantime, the family members of the deceased came out. Accused No.4 hit a stick blow on the head of the complainant's sister Babutai (PW11), who had intervened. After seeing this, the complainant fell unconscious. He was removed to the hospital. He regained his consciousness in the hospital. The Police recorded his statement and treated the same as complaint (Exh.26).

3. As per the complaint, as there was dispute and enemity on account of the field, the accused assaulted the complainant, his brother and his family members. Therefore, initially, a crime for offence punishable under Section 307, 504 of the IPC was registered. However, on the same night, the deceased succumbed to his injuries and hence the crime was altered and re-registered under Section 302, as well as, under

Section 307 of the IPC. The appellant-accused had voluntarily caused injuries to the eye witnesses and, therefore, after completing due investigation PW16 PSI Chougale had filed the chargesheet against all the accused under Section 302, 307, 326, 504 r/w 34 of IPC. All the accused pleaded not guilty and claimed to be tried. Their defence was that the deceased and the complainant had been to their house holding swords, axes and sticks and assaulted accused No.3 Babaso. They denied any enemity between the complainant and the accused on account of the said field "Gaondhar".

4. The prosecution has examined, in all, 16 witnesses. Those are: Panch witnesses PW1 Shankar Ramchandra Sasane, PW2 Niwas Nivrutti Vatkar; PW3 - complainant Krishna Lahu Ghungurkar, PW4 Hindurao Dadu Toraskar, PW5 Suryakant Mahapati Kadam, PW6 Vishnu Ganpati Khade; PW7 - Krishna Bandu Wagavekar, PW8 Anjubai Pandurang Karade, PW9 Shrikant Dattoba Madake, PW10 Shankar Bhau Ghungurkar, PW11 Babutai Namdeo Patil [PW7 to PW11 are eye witnesses], PW12 Sunita Milind Tiwale, PW13 Shankar Antu Kamble - Medical Officer, PW14 Dr. Dipak Babusaheb Patil [proved the Post Mortem Notes]; PW15 Vithal Maruti Kadam, the Police Head Constable, and PW16 PSI Sukhadeo Belappa Chaugale, the Investigating Officer [IO]. No defence witness was

examined.

5. Heard the learned counsel Mr. S.A. Ingawale for the appellants and the learned A.P.P. Mr. D.R. More for the State of Maharashtra. We have gone through the record in extenso. After hearing the learned counsel for the parties and after taking into consideration the contentions raised in the Memo of Appeal and as argued, we are of the view that there is no case made out to interfere with the reasoned order of conviction, passed based on the material on the record. The view, as taken by the learned Judge, is correct. The judgment and order, therefore, is confirmed also on the following reasons.

6. The complainant Krishna (PW3), Babutai (PW11), Anjubai (PW8), belong to one family and their testimony fully supports the prosecution case. They gave consistent version of the occurrence. The complainant, as per the complaint (Exh.26), and his testimony, stated that accused Nos.1 to 4 came in front of the door of their house where, the deceased and the complainant were sitting on the sopa, and started abusing them. Accused No.1 was holding the spear. Accused Nos.2 and 3 were holding the axes. Accused No.4 was holding the stick in his hand. The complainant came out of the house, as

called by the accused. The complainant asked them to stop abusing. Accused No.3 immediately rushed and tried to hit the complainant by the axe, which the complainant had warded off. However, by that time, accused No.2 hit the axe blow on the head of the complainant. Accused No.4 hit the complainant with the stick on his back. The complainant fell down. The deceased, therefore, came there and requested them not to assault the complainant. Accused Nos.2 and 3 Namdeo and Babaso gave blow of the axe on the head of the deceased. Accused No.4 Bajirao also assaulted the deceased with the stick. Accused No.1 Pandurang assaulted the deceased with the handle of the spear. The deceased, therefore, fell down. In the meantime, the sister of the complainant Babutai (PW11), who was present in the house, came out to save the deceased. Accused No.4 Bajirao assaulted Babutai with the stick on her head. She also fell down. One Krishna Wagavekar (PW7) was also present. All these injured witnesses i.e. complainant, Babutai and Anjubai (PW8) have corroborated and answered the presence of all the accused and their respective assaults. These witnesses have corroborated the above narrated prosecution case and proved the presence of all these witnesses, at the relevant time, when the accused, with common intention, killed the deceased and caused grievous injuries to the complainant and injuries to the

witnesses.

7. The two independent witnesses Hindurao Toraskar (PW4) and Krishna Wagavekar (PW7) have also corroborated and supported the aforesaid version of PW3. Apart from these material witnesses, the Spot Panchanama (Exhibit-21) also supports the prosecution case as the same has been proved by PW1 Shankar and PW16- IO. This also corroborates the prosecution case that the incidence took place in front of the house from where the sample of human blood mixed with earth was collected and which is supported by the Report of the Chemical Analyzer (Exhibit-59). It also supports the prosecution case that the complainant was lying injured at the time of the incidence and the deceased Yashwant was lying on the spot.

8. PW12, Dr. Sunita Tiwale further supports the prosecution case that Anjubai and Hindurao had also received injuries on their person. This further corroborates the presence of all the witnesses, including the independent witness Hindurao, who was living in the same locality. The Medical Report issued by PW13 Shankar Antu Kamble, the Medical Officer, C.P.R. hospital, Kolhapur, further supports that the complainant Krishna was grievously hurt and specially

injury Nos.1 and 2, were possible by the reverse side of article nos.14 and 15 i.e. axes and injury No.1 was possible by the stick, article No.12. As we have noted, the blow given by accused No.4 i.e. injury No.1 was dangerous and could have caused the death. The injured complainant was admitted in the hospital for seven days as an indoor patient. Therefore, the learned Judge was right in holding that accused No.4 is guilty of the offence of attempting to commit murder under Section 307 IPC along with accused No.2.

9. The testimony of all these witnesses further corroborates that all accused Nos.1 to 4, with common intention, gave deadly blows to the deceased and specially by accused Nos.2 and 3 with axes and accused No.4 with stick. As per the evidence the injured witness requested the accused not to assault, but in vain. This shows the intention of all the accused to attack and assault the complainant, and the deceased. The medical evidence of Dr. Kamble (PW13) and Deepak Patil (PW14) further corroborates the injuries caused to the deceased. Out of 10 major injuries, basic three injuries caused the death. The Medical Officer further stated that injury Nos.1 to 3 are possible if blows are given by the stick or reverse side of the axe and injury Nos.4, 5, 6, 7 & 10 are possible, if blows are given by

the stick. As already noted, accused Nos.2 and 3 gave axe blows on the head and accused No.4 gave a stick blow on the head, and on the back of the deceased. All these injuries, as per the Medical Officer were quite possible by blows given by accused Nos.2, 3 and 4. The stick and specially (article No.12) are quite heavy. The Medical Officer has also noted haematoma under the scalp both temporal and occipital region. There was fracture of the skull extending from right temporal bone to the occipital bone. It was extending horizontally to the left petrous bone. There was fracture of middle and posterior cranial fosea. This doctor has further stated that the stomach was full of undigested material. This also supports the prosecution case that the incident took place immediately after the lunch. Therefore, the prosecution has proved that all the accused, with common intention, mercilessly hit on the vital parts and murdered the deceased and grievously hurt the complainant and injured other witnesses.

10. The prosecution has further placed on the record, Exhibit-45, which are the hospital case papers to support the severe internal bleeding due to the injuries on the head of the deceased, which were caused by deadly weapons like axes and heavy sticks. The testimony of Dr. Patil remained intact in the

cross-examination. According to us, therefore, the learned Judge was right in observing that all the accused are guilty for the offence punishable under Section 302, 307 r/w 34 of IPC.

11. PW12, Dr. Sunita Tiwale had examined PW8 Anjubai an injured witness. PW11 Babubtai was also injured and PW13 Dr. Kamble had examined her (Exh.44). The testimony of these witnesses shows that accused No.4 gave stick blow on the hip of PW8 Anjubai and on the head of PW11 Babutai. The injury on the head of Babutai was grievous. This further corroborates the prosecution case and the presence of all these material witnesses at the relevant time. These witnesses cannot be said to be interested witnesses merely because they are related to the complainant. According to us also, their presence was natural. The testimony of these witnesses is reliable and truthful. Their testimony, therefore, cannot be discarded merely because these witnesses are closely related to the deceased what is needed is close scrutiny and corroborations.

12. The learned Advocate appearing on behalf of the appellants relied upon **Hallu & Ors. Vs. State of Madhya Pradesh** [reported in 1974, Criminal Law Journal, 1385] and submitted that as per the prosecution, accused

No.2 and 3 gave axe blows on the head of the deceased and that of the complainant. The presumption is that assault must have been given by the sharp side of the axes, whereas the Medical Officer stated that the blows given were also possible by the reverse side of the axe. He, therefore, contended that unless proved by the prosecution, it cannot be presumed that the accused had given blows by the blunt side of the axes, it's benefit should be given to the accused, as the medical evidence is not supportive to the testimonies of the prosecution case. The learned Advocate also relied on the judgment in the case of **Bhola Singh Vs. State of Punjab** [reported in AIR 1999, S.C., 767] to claim the same relief. There were other factual aspects which were also considered by the Apex Court while acquitting the accused in those cases. In the present case, as recorded, all the eye witnesses have identified and named the accused and weapons used. Accused No.4 gave blows of the stick on the head and the back side of the deceased. The axe blows by the accused Nos.2 and 3 cannot be overlooked. The doctor has opined that the fatal injuries were possible also by the stick and the back side of the axe. The incident took place in broad day-light. The presence of all the injured eye witnesses cannot be discarded. Their evidence is clear, cogent and trustworthy. The death of the deceased and

the grievous injuries to the complainant (caused by accused No.4) and the injuries to other witnesses caused by the accused by the respective weapons, cannot also be overlooked as the same is also supported by the medical evidence. In the facts and circumstances of the present case, therefore, the Apex Court decisions in **Hallu & Ors. & Bhola Singh** (*supra*), apart from distinct facts, are not helpful to the appellant-accused.

13. Merely because some injuries caused to accused No.3 were not explained by the prosecution. In the facts and circumstances of the case, as sought to be contended by the counsel, benefit cannot be given to the accused. The possibility of injury being caused to accused No.3 during the scuffle, as accused No.3 was attacking the complainant with an axe, but the complainant had warded off the axe blows cannot be ruled out. The Apex Court in **Hare Krishna Singh & Ors. Vs. State of Bihar** [reported in AIR 1988, S.C., 863] has held that the prosecution were not obliged to account for each and every injury. The failure of the prosecution to give reasonable explanation of the injury would not go against or throw any doubt in the prosecution case, specially in the present facts and circumstances of the case, when the prosecution has proved the guilt of the accused beyond reasonable doubt

with the supporting evidence of the injured eye witnesses.

14. The point of non-examination of any independent witness, as sought to be contended, is also not correct. In the present case, there are independent witnesses who supported the prosecution case, apart from the related witnesses of the complainant. In the present case, the presence of the injured independent eye witnesses was natural.

15. The learned Advocate appearing for the accused also sought to contend that there was no land dispute or any dispute pending, as the transaction about the land took place ten years before the date of the incident (PW9-Shrikant). There was no motive and or any threat brought on the record by the prosecution. On the contrary, the deceased, complainant and the injured witness had come to attack the accused and in the process of self defence, the incident took place. After considering the entire material on the record, this defence cannot be accepted. In view of the injured eye witnesses and other corroborative material evidence on the record, the motive, even if not sufficiently explained, that itself cannot be the reason to reverse the finding given by the learned Judge based on the

material placed on the record. The Apex Court in **Kishan Vs. State of M.P.** [reported in (1974) 3, S.C.C., Page 623] held that "right of self-defence does not extend to the agressor who retaliates to the act of self-defence of the victim and inflicts severe blows causing his death" (verify).

16. The learned Judge is also right in accepting the evidence of these witnesses even if there are some missing details or omissions in the facts and circumstances of the case, specially when it nowhere disturbs the prosecution case. It is not expected from the witnesses to give a mathematical account of each and every detail. In the present case, all the witnesses have corroborated each other and proved beyond reasonable doubt the individual acts and assaults made by the respective accused. There are no material omissions or contradictions to discard their evidence.

17. PW6 Vishnu, a Panch witness, read with the evidence of PSI Sukhadeo Chaugale (PW16) have further supported the discovery of two blood stained axes (articles 14 and 15). Except some discrepancy in the size, PW6 has supported the Panchanama (Exh.31) and its contents. This discovery was at the instance of accused and two blood stained axes were discovered from the

house of the accused Babaso. The same two axes, which were hidden by the accused Bajirao, were discovered from the old house by removing dung cakes on it, were accordingly attached (Exh.32) by PW16. Mr. Kadam, the earlier Investigating Officer had attached the spear and the stick in this case. The discovery of these human blood stained axes (articles 14 and 15) and the spear and the stick (article 12) further corroborates the prosecution case. The Chemical Analyzer's Report (Exh.59) also supports the prosecution case. All the exhibits from 1 to 15, except Exhibit No.5, were stained with human blood. The blood detected on Exhibits 1, 2 and 3 were of **AB** group. Exhibits 12 to 14 were stained with blood of **A** group. As per the Chemical Analyzer's Report, the blood on the axe (article 15) was of **A & B** group. The blood group of the deceased Yashwant was **AB**. The blood group of Krishna was **B** group. Accused Nos.1, 2 and 3 have blood of **A** group. The detection of human blood on these Exhibits and articles also support the prosecution case. All the accused have basically answered *"It is false"* in their statements under Section 313 of the Cr.P.C. They have denied all the Panchanamas and its contents. There is nothing to support their case about false involvement and evidence at the instance of the rival group of "Ajinkya Krida Mandal". In this background, the decision of the Bombay High

Court in **Balu Sambhaji Shinde Vs. State of Maharashtra** [reported in 2002, Vol.104 (1), Bombay Law Reporter, 257] as relied upon by the appellant is distinguishable on facts as in the present case, blood stained axes and other articles were discovered at the instance of the accused. The Panch witness, as well as, the IO have corroborated and proved the said discovery. In **Balu Sambhaji** (*supra*), there were lacunas and improper sealing in sending the articles to the Chemical Analyzer and the Investigating Officer was also unable to support the prosecution case of proper sealing. It was held that in the absence of proper authorship of concealment and the fact that the clothes were not identified by anyone and that the exclusive possession of the house of accused No.1 was not shown, the discovery of the clothes at the instance of accused No.2 was not established beyond doubt and that resulted into the acquittal of accused No.2, but accused No.1 was convicted, in that case also. In the present case, considering the discovery of the weapons and supporting evidence of PW6 and PW16 read with the Chemical Analyzer's Report, apart from the evidence of the eye witnesses, we are totally satisfied that the prosecution has been able to connect the appellants with the crime.

18. For the above discussion and reasoning, we are

totally satisfied that the prosecution has proved that all accused Nos.1 to 4 have committed the murder of the deceased and they have caused grievous injury to the complainant, which could have resulted into death, and they have injured the other eye witnesses. We, therefore, confirm the impugned judgment and order.

19. The Appeal is, therefore, dismissed. The appellants to surrender to their bail bonds forthwith.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 27TH APRIL, 2005

P.C. :

. On application of Mr. S.A. Ingawale, Advocate for appellants, order to surrender is stayed till three weeks from today i.e. 27/04/2005.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]